HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTSICE G. BHAVANI PRASAD

W.P. NO.2452 of 2006

Between:

Boya Thayamma, W/o Boya Thikkaiah,
Aged about 35 years, Occ: House wife,
r/o.Victoriapeta, Meddarigeri, Adoni Town,
Kurnool District … Petitioner

and

Government of Andhra Pradesh, rep. by
its Secretary, General Administration
Department (Law & Order), Hyderabad
and two others … Respondents

:: ORDER ::

Counsel for the petitioner : Sri J. Janaki Rami Reddy

Counsel for respondents : Sri A. Satyaprasad,
Special Government
Pleader

23rd FEBRUARY, 2006

Per G. Bhavani Prasad, J

Boya Thayamma, wife of Boya Thikkaiah, Victoriapeta, Meddarigeri, Adoni, Kurnool district, has filed this petition questioning the detention of her husband Boya Thikkaiah (hereinafter referred to as "detenu") under the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986 (for short "the Act").

The petitioner claims that her husband, an agricultural coolie, was taken away from his house by the police on 09-12-2005. Subsequently, she was served with the proceedings of the Collector and District Magistrate, Kurnool in Rc.No.C1/1271/M/2005, dated 09-12-2005 directing detention of her husband, Boya Thikkaiah in Cherlapalli Jail in exercise of the powers under Section 3(1) and (2) of the Act. The State Government confirmed the order of detention vide G.O.Rt.No.460 dated 25-1-2006. The petitioner has pleaded that the order of

detention has been passed due to political rivalry as her husband played an active role in campaigning for his brother who contested as a Councillor in Adoni Municipality on behalf of Telugu Desam Party. She has further pleaded that the order of detention is ultra vires to Section 3 of the Act because the three cases registered against her husband do not lead to an inference that he is acting in a manner prejudicial to the maintenance of public order or is dangerous to public health.

In the counter filed on behalf of the Collector and District Magistrate, Kurnool, it has been averred that the order of detention was passed because the petitioner's husband was indulging in illegal activities of dangerous offences of sale of illicitly distilled liquor in and around Adoni town in Kurnool district and acting in a manner prejudicial to the maintenance of public order and tranquility and thereby causing widespread danger to the public health and safety, squarely falling within the definition of 'bootlegger' as defined under Section 2 (b) of the Act. It has been further averred that the Prohibition and Excise Superintendent, Kurnool placed a report before him along with the material bringing to his notice that the detenu is habituated in operating in sale and possession of illicitly distilled liquor for monetary gain in and around Adoni town, which is adversely affecting the public, particularly the down trodden and under-privileged sections of the people living in and around Adoni town and also furnished a list of various cases in which the detenu was involved. He, after going through the material, felt convinced that it was a fit case for exercise of power under Section 3 of the Act. Still further it has been averred that in crime No.406/2003-04 dated 04-01-2004, the detenu was found in possession of 10 litres of illicitly distilled liquor in a plastic can and the chemical analysis report revealed that the sample appeared to be illicitly distilled liquor. Thereupon, charge sheet was filed on 10-9-2003. In crime No.281/2005-06 dated 18-10-2005 the detenu was found in possession of one white plastic can with 20 litres of I.D. liquor, which was also found on chemical analysis to be illicitly distilled liquor unfit for human consumption. The case is under investigation. In crime No.371/2005-06 dated 05-12-2005, the detenu was found in possession of 5 litres of illicitly distilled arrack, which was also found on chemical analysis to be illicitly distilled liquor unfit for human consumption. This case is also under investigation. The launching of prosecution in the three cases had no desired impact on the clandestine and bootlegging activities of the detenu and hence,

circumstances existed for passing an order of detention. The allegations of false implication due to political rivalry have been denied and it has been averred that the confirmation of the order of detention by the State Government on the recommendations of the Advisory Board is clearly indicative of the fact that the satisfaction of the concerned officer was not tainted with arbitrariness or bias.

Sri J. Janaki Rami Reddy, the learned Counsel for the petitioner strenuously contended that even if the allegations in the grounds of detention were to be relied on, they do not disclose any basis for arriving at any satisfaction about the necessity of detention of Boya Thikkaiah with a view to preventing him from acting in a manner prejudicial to the maintenance of public order and, therefore, the orders under challenge should be declared ultra vires to
Section 3 of the Act and quashed. Learned counsel further argued that no prejudice to the maintenance of public order can even be remotely presumed from the allegations enumerated in the order of detention. In support of his arguments, Sri Reddy relied on the judgments of this Court in **N. Rami Reddy v. Government of Andhra Pradesh** and **M. Prema Bai v. The Commissioner of Police**.

Sri A. Satyaprasad, learned Special Government Pleader for the respondents argued that the activities of the detenu make him a 'bootlegger' within the meaning of Section 2 (b) of the Act and in order to prevent him from continuing such illegal activities, the competent authority passed the order of preventive detention under Section 3 (1).

We have given serous thought to the arguments of the learned counsel and perused the record, including the original file produced by the learned Special Government Pleader.

The grounds of detention specifically refer to crime No.406/2003-04 dated 04-01-2004, crime No.281/2005-06 dated
18-10-2005 and crime No.371/2005-06 dated 05-12-2005 registered against Boya Thikkaiah. The allegation in the three cases was that the detenu was found in possession of 10 litres, 20 litres and
5 litres of illicitly distilled liquor. The illicit nature of the liquor was established from the chemical analysis and the same was found unfit for human

consumption. However, there is nothing in the file produced by the learned Special Government Pleader from which it can be inferred that the detenu was himself engaged in illicit distillation of the liquor found in his possession or that he was indulging in illicit sale of liquor.

The report of the Prohibition and Excise Superintendent, Kurnool dated nil, on which the Collector and District Magistrate acted, referred to seven cases against the detenu, two of the year 2001, one of the year 2002, two of the year 2004 and two of the year 2005 for possession of 15, 10, 5, 10, 5, 15 and 5 litres of illicitly distilled liquor respectively which was stated to be unfit for human consumption and injurious to health. The report of the Prohibition and Excise Superintendent states, charge sheets to have been filed in five cases and that charge sheets are yet to be filed in two cases. It is thus clear that in none of the cases the detenu has so far been found guilty of the offences alleged against him.

The order of detention refers to the information laid before the Collector and District Magistrate by the Prohibition and Excise Superintendent, Kurnool showing that the detenu was found in possession and was engaged of the sale of illicitly distilled liquor in and around Adoni Town, which, in the opinion of the detaining authority, is amounting to acting prejudicial to the maintenance of public order and tranquility, thereby causing danger to the public health and safety. However, the material placed on record do not show that the detenu was selling illicitly distilled liquor and that such sale was dangerous to public health and safety. It is also inexplicable as to how possession of small quantity of illicitly distilled liquor, even if found true, is prejudicial to the maintenance of public order necessitating exercise of power of preventive detention. In our opinion, the officer concerned has used the stock words, phrases and expressions appearing in the statute to justify the exercise of power under Section 3 of the Act.

The Advisory Board constituted under Section 9 of the Act, after review of the case on 18-01-2006, of course, recorded its opinion that there was sufficient cause for detention of the detenu, but did not elaborate the reasons for its opinion. The approval of the Government for the detention order under G.O. Rt. No.8265, dated 15-12-2005 or the confirmation of the detention order

under Sub-Section (1) of Section 12 read with Section 13 of the Act by the State Government under G.O. Rt. No.460 General Administration (Law & Order.II) Department, dated 25-01-2006 also does not indicate any reason or ground for continuing the detention for the maximum period of 12 months permitted by Section 13 of the Act.

We may now advert to Section 3 of the Act which empowers the State Government to make an order for detention. The same read as under:

> "**3 Power to make orders detaining certain persons:-**
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> (1)The Government may, if satisfied with respect to any boot legger, dacoit, drug offender, goonda, immoral traffic offender or land grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.
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> (2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub section (1), exercise the powers conferred by the said sub section:
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> Provided that the period specified in the order made by the Government under this sub section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.
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> (3) When any order is made under this section by an officer mentioned in sub section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government."

A reading of the plain language of Section 3 (1) makes it clear that the government can pass an order of detention only if it is satisfied that the activities of bootlegger, dacoit, drug-offender, goonda, immoral traffic offender

or land-grabber is in any manner prejudicial to the maintenance of public order and it is necessary to prevent him from doing so. In **E. Sumathamma v. The State of Andhra Pradesh**, a Full Bench of this Court considered whether every violation of the Excise Act could justify an order of preventive detention. While answering the question in negative, the Full Bench observed:

> "As there is no danger to public health or life if a person stocks genuine liquor, it cannot be said that he has acted in a manner prejudicial to the maintenance of public order. The act alleged may amount to an offence under the Excise Law but it will not justify preventive detention under the Act."

In **Boya Chinna Subbarayudu v. The Collector and District Magistrate, Kurnool** a Division Bench of this Court again considered the same issue. The facts of that case show that the detenu was found in possession of 200 litres of fermented jaggery wash and 10 litres of illicitly distilled liquor respectively in two cases. He was detained under Section 3 (1) of the Act. While quashing the order of detention, the Division Bench observed:

> "Everyone who answers the description of
> boot-legger cannot be detained preventively under the Act. The detaining authority must be satisfied that the detention is necessary with a view to preventing the person concerned from acting in any manner "prejudicial to the maintenance of public order" (vide Section 3(1)). The words "acting in any manner prejudicial to the maintenance of public order" are defined by Section 2(a) as meaning "when a
> boot-legger, a dacoit, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order". The explanation to clause (a) of Section 2 says:
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> > "For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely *inter alia,* if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health".

> It is therefore clear that a person who is a boot-legger by reason of his indulging in acts in contravention of the provisions of the A.P. Excise Act, the rules and the notifications and the orders made under that Act cannot be detained under Section 3(1) of the Act unless the acts in which he is indulging affect or likely to affect adversely the maintenance of public order. In other words only if the activities of the boot-legger cause "grave or widespread danger to life or public health" he can be detained. If a boot-legger sells illicitly distilled arrack which contains harmful substances, certainly he can be detained on the ground that his activities constitute grave danger to life or public health.
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> The question to be considered is whether selling of illicit arrack itself is an act which constitutes a grave or widespread danger to life or public health? In our view the answer must be in the negative; unless the arrack illicitly sold contains substances which constitute grave danger to life or public health, no order of detention can be issued under Section 3 of the Act."

The Division Bench concluded that unless the grounds of detention specifically advert to the fact that the percentage of fusel oil found in the seized liquor constitutes a grave or widespread danger to life or public health, it is not open to the detaining authority to order detention under Section 3 of the Act and that since that has not been done, they were constrained to hold that the fundamental right of the detenu under Article 22(5) of the Constitution of India was violated.

In **K. Chinnappa Reddy v. District Collector-cum-District Magistrate** also three incidents led to registration of three cases under the Excise Act against the detenu which were made basis for passing the order of preventive detention. The Division Bench referred to the Full Bench judgment in **Sumathamma**'s case (supra) and held that the contrary view expressed by another Division Bench in W.P. No.2180 of 1994 dated 09-3-1994 was *per incuriam*. The relevant portions of that order of the Division Bench are extracted below:

> "In the present case, first respondent, the detaining authority, has not mentioned in the grounds of detention that the arrack seized from the petitioner, the sales of which are attributed to the petitioner, if consumed, would result in grave or widespread

danger to life or public health. The reports of the Regional Excise Laboratory also do not show that the arrack contains any harmful substance. Dealing with a similar contention in W.P. No.16671 of 1994, dated 17-10-1994 (Boya China Subbarayudu's case (4 supra)), Their Lordships held:

> "Unless the grounds of detention specifically advert to the fact that the percentage of the fusel oil found in the seized liquor constitutes a grave or widespread danger to life or public health, it is not open to the detaining authority to order detention under Section 3 of the Act. Since that has not been done, we are constrained to hold that the fundamental right of the detenu under article 22 (5) of the Constitution is violated". "

In **N. Rami Reddy v. Government of Andhra Pradesh** also the detenu was involved in three cases of possession of 5 litres, 1 ½ litres and 1 litre of illicitly distilled liquor, which was found on chemical analysis to be illicitly distilled liquor unfit for human consumption, but was not stated to be 'harmful'. While quashing the order of detention, the Division Bench:

> "The question to be considered is whether selling of illicit arrack itself is an act which constitutes a grave or widespread danger to life or public health? In our view the answer must be in the negative; unless the arrack illicitly sold contains substances which constitute grave danger to life or public health no order of detention can be issued under Section 3 of the Act."

In our opinion, the ratio of the aforementioned decisions is squarely applicable to the facts of the case. Therefore, the order of detention as also the order of confirmation passed by the Collector and District Magistrate, Kurnool and the State Government respectively are liable to be nullified.

In the result, the writ petition is allowed and the order of detention in the proceedings of the Collector and District Magistrate, Kurnool in Rc.No.C1/1271/M/2005, dated 09-12-2005 and the confirmation of the same by the Government of Andhra Pradesh in G.O. Rt. No.460 General Administration (Law & Order.II) Department, dated 25-01-2006 are quashed. The detenu, who is now lodged in Central Prison, Cherlapalli, Ranga Reddy District, shall be set at liberty forth with, if his presence is not required in connection with any other

case.

G. BHAVANI PRASAD, J

23rd February, 2006

G.S. SINGHVI, C.J.

Svv / svs

Note:

The Court Officer is directed to give attested

copy of the order to the counsel for the parties.

(By order)

svs